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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 658

GENERAL MOTORS CORPORATION,
a Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),
Appellant,

v.

APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
and
ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellees Robert H. Stinson, et al., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss on the grounds that:

(1) a decision of the federal question was unnecessary to the determination of the cause by the higest state court in Michigan, and

(2) a substantial federal question is not presented.

OPINIONS BELOW

The questions appellant seeks to review are considered in the opinions of the Supreme Court of Michigan, reported at 378 Mich. 110, and 376 Mich. 135, of the official Michigan Reports, and at 142 N.W. 2d 686, and 135 N.W. 2d 921, reproduced in the Jurisdictional Statement, Appendix A-11 and A-10, respectively.

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 62 Stat. 929 (1948), 28 U.S.C., Sec. 1257(a). For the reasons set forth herein, the Appeal should be dismissed.

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Michigan Employment Security Act[1] are as follows:

Sec. 2. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state.

[1] Act No. 1, PA 1936, ex sess, as amended (CL 1948 §421.1 *et seq.* [Stat Ann 1960 Rev §17.501 *et seq.*])

Social Security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

Sec. 29. (1) An individual shall be disqualified for benefits:

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed.

Sec. 31. No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

Sec. 40. "Employing unit" means any individual or type of organization, including any partnership, associa-

tion, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

QUESTION PRESENTED

If any federal question has been properly raised and presented, the Jurisdictional Statement does not accurately state such question. We restate what appellees Robert H. Stinson, et al. believe to be the only possible federal question raised:

> May the State of Michigan allow unemployment benefits without disqualification to persons unemployed through no fault of their own when their involuntary unemployment at plants of the General Motors Corporation in Flint, Michigan, results from a strike in a Mansfield, Ohio, General Motors Corporation plant?

In addition, appellees Stinson, et al., by this Motion to Dismiss, raise the following issues:

(1) A decision of the federal question was unnecessary to the determination of the cause by the highest State Court in Michigan.

(2) A substantial federal question is not presented.

STATEMENT OF THE CASE

The Michigan Supreme Court set forth the facts as follows:

> "Claimants were employees of plaintiff, General Motors Corporation, in its Fisher No. 1 and its Buick Plants in Flint, Michigan. In the manufacturing operations of those 2 plants, parts were necessary which were made in its Fisher Body Plant in Mansfield, Ohio. A strike was called at the Mansfield plant, authorized by the International Union of which the employees in all 3 mentioned plants were members. This occasioned cessation of operations in the Mansfield, Ohio, plant, which resulted in a lack in the two Flint plants of parts manufactured in Mansfield which were necessary to the Flint manufacturing process, and this, in turn, caused the shutting down of the Flint plants and consequent unemployment of claimants." (376 Mich. 135, 138-139)

With reference to the subject matter of the dispute belabored by the appellant in its Jurisdictional Statement, the Court said:

> "In this case of General Motors, the Referee and the Appeal Board, by adoption of the Referee's decision, found, contrary to the company's assertions, that:

> 'The issues resulting in the labor dispute at the Mansfield, Ohio, plant were local matters concerning working conditions involving the employees in such plant. It was not shown that the wages, hours or working conditions of the claimants herein were involved in such labor dispute. It was brought out that certain matters concerning apprentices were involved in the dispute at the Ohio plant, and that agreement reached in this respect covered approximately 20 different units of the employer, none of which, however, concerned apprentices at the Fisher Body and Buick Motor Division plants in Flint.'
>
> "The record amply supports the findings quoted." (378 Mich. 110, 116-117)

The Court posed the issue as follows:

> "The facts in this case are substantially like those in *Park v. Employment Security Commission,* 355 Mich. 103, and decision therein might be considered to govern decision here, except for the one distinguishing feature . . ." (376 Mich. 135, 139)

The Court then quotes paragraph 118 [Exhibit 25 (405a)] of the contract between employer and union as follows:

> "The Union has requested this national agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly, an authorized strike in one bargaining unit under this agreement which results in an interruption in the flow of material or services to operations in any other bargaining unit under this agreement, will be considered an authorized strike in any such affected bargaining unit." (376 Mich. 135, 139)

The Court then comments:

> "In *Park,* a majority of this Court decided that the employees in the Michigan plant, shut down for

> lack of parts regularly manufactured in and furnished to the Michigan plant by a struck Ohio plant, were not disqualified from receiving benefits under said Section 29(1)(b) of the Act, which provides for such disqualification in case of unemployment due to a stoppage of work existing because of a labor dispute in the *establishment* in which claimant is or was last employed. This decision was based on the holding that the struck Ohio plant and the resultantly closed Michigan plant were not one or the same *establishment*, and hence, the disqualification of that section did not apply. That would seem to cover the facts in the case at bar except for the mentioned provision for the union-management labor contract. Does it make the *Park* decision inapplicable?" (376 Mich. 135, 139-140)

The Court then refers to the contention of claimants that Section 31 of the Statute, barring waiver of benefit rights, makes this contract provision invalid under the Statute, commenting:

> "The question, then, boils down to this, whether the quoted provision of the contract is violative of Section 31 of the act, and, hence, invalid and inoperative. If so, claimants may receive compensation. If not, they are disqualified therefor". (141)

REASONS FOR GRANTING MOTION TO DISMISS OR AFFIRM

(1) A DECISION OF THE FEDERAL QUESTION WAS UNNECESSARY TO THE DETERMINATION OF THE CAUSE BY THE HIGHEST STATE COURT IN MICHIGAN.

(a) The decision of the highest State Court was based on non-federal grounds, adequate to support the judgment, independent of Federal issues:

The Michigan Supreme Court decision is set forth in the Opinion of Justice Souris, at 378 Mich. 110, which concludes:

> ". . . I join now in Justice Black's opinion for reversal appearing at 376 Mich. 135, 143, not alone for the reasons therein stated but, as well, for the further reason considered herein.
>
> "T.M. Kavanagh, C.J., and Smith, J., concurred with Souris, J.
>
> "Black, J., concurred in the result." (118)

"The determination of the cause" by the Opinion of the Court majority, written by Justice Souris, is as follows:

> "It is my judgment that Justice Black was right in concluding that paragraph 118 of the collective bargaining agreement between General Motors and the claimants' union cannot be given the effect contended for it by General Motors without violation of Section 31 of the Employment Security Act (CL 1948, §421.31 [Stat Ann 1960 Rev §17.533]) and that, therefore, our decision in *Park v. Employment Security Commission* (1959), 355 Mich. 103, requires reversal of the circuit court's judgment.

> "Since our grant of rehearing, General Motors has filed a supplemental brief in which it reargues the contention previously advanced but not considered in Justice Black's opinion. It is that claimants are disqualified from receiving unemployment compensation benefits not alone because of paragraph 118 but, as well, because claimants' unemployment resulted in fact from a work stoppage due to a labor dispute in the establishments, even as defined in *Park, supra,* in which they were last employed." (114-115)

The Court then discusses this second contention, and points out that the Appeal Board found to the contrary. It then comments:

> "The trouble with this argument is that we are not free to set aside findings of facts made by the appeal board unless such findings are contrary to the great weight of the evidence." (116)

It then cites the findings of fact of the Appeal Board, and concludes:

> 'The record amply supports the findings quoted. Indeed, had the appeal board found, as a matter of fact, that a labor dispute existed in the Flint plants in which claimants were employed solely on the basis of the evidence submitted by the company and summarized above, we would have had to hold that such finding was contrary to the great weight of the evidence." (117)

Justice Souris then concludes with the comment that he joins in Justice Black's opinion, previously described by Justice Souris as dealing with the interpretation to be given paragraph 118 of the agreement between General Motors Corporation and United Automobile Workers in view of Sec. 31 of the Michigan Act.

There is not one word of reference in the Souris Opinion to any federal question.

The Opinion of Justice Black at 376 Mich. 143, first cites the precedent of the previous Michigan case, *Park v. Employment Security Commission,* to the effect that the several plants of a multi-plant corporation "must be held to be separate establishments", and then rules adversely with respect to the contention of General Motors that paragraph 118 of its collective bargaining agreement governs the case. Justice Black adds:

> "The final question is stated appropriately by the attorney general:
>
> > 'Does the supremacy clause of article 6 of the Federal Constitution validate a provision of a collective bargaining agreement which is illegal under a State unemployment compensation law?' " (146)

Justice Black then agrees with the Attorney General that ". . . . the goal of Federal labor policy, as expressed in the National labor relations act, (see *Oliver* at 295, 296), is in no manner inconsistent with that uniform policy of the States which prohibits agreement 'by an individual' to waive or commute payment of unemployment compensation in any instance where such compensation is otherwise lawfully payable to such individual" (146).

In a footnote to this statement (footnote 9 at pp. 146-147) the Court says:

> "All 50 of the States, and Puerto Rico, have included in their respective compensation laws nonwaiver provisions which either duplicate section 31 or are set forth in the same specific essence. This information appears in Unemployment Insurance Reporter, Vols. 1B through 10, published by Commerce Clearing House."

The Court concludes:

> "Since as applied here the Federal policies of social security, effected in part by State-enacted unemployment insurance, and of enforced collective bargaining reduce industrial strife, are concordant rather than collisive, both stand without offense to the supremacy clause. The *Oliver Case,* as I read it, applies only when a State law, if given effect in a specific situation, 'would wholly defeat the full realization of the congressional purpose.' (*Oliver* at 295, 296) No such defeat of congressional purpose, by Section 31's outlawing of the construction General Motors claims for paragraph (118) has been made to appear." (147)

Footnote 11 of the Court to this statement reads as follows:

> "This view of the *Oliver Case* finds support in the Supreme Court's most recent reference thereto. See this concluding passage, written in the corresponding tenor of *United Mine Workers of America v. Pennington,* ... U.S. ... at ... (85 S. Ct. 1585, 1591; 14 L. ed. 2d 66):
>
> > 'But there are limits to what a union or an employer may offer or extract in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other laws. *Teamsters Union v. Oliver,* 358 U.S. 283, 296 (79 S. Ct. 297, 3 L. ed. 2d 347); *Brotherhood of Carpenters v. United States,* 330 U.S. 395, 399-400 (67 S.Ct. 775, 91 L. ed. 973).'" (147-148)

(b) In such cases review is barred for want of jurisdiction.

A 1932 note at 62 Col. L. Rev. 822, emphasizes the narrow limits of jurisdiction, as follows:

> "Consequently, even if a federal question has been decided, Supreme Court review is barred if the State Court's disposition was also based on a non-federal ground, that is, in the Court's view, independent of federal issues before the Court and adequate in itself to support the judgment." (822)

This statement cites *Fox Film Corporation v. A.B. Muller,* 296 U.S. 207 (1935), and *Enterprise Irrigation District, et al. v. Farmers Mutual Canal Company,* 243 U.S. 157 (1917).

Fox Film Corporation held:

> "The non-federal question in respect of the construction of the contracts and the federal question in respect of their validity under the Anti-trust Act, were clearly independent of one another. See *Allen v. Southern P. R. Co.,* 173 U.S. 479, 489-492, 43 L. ed. 775, 778-779, 19 S. Ct. 518. The case, in effect, was disposed of before the federal question said to be involved was reached. *Chouteau v. Gibson,* 111 U.S. 200, 28 L. ed. 400, 4 S. Ct. 340; *Chapman v. Goodnow (Chapman v. Crane),* 123 U.S. 540, 548, 31 L. ed. 235, 238, 8 S.Ct. 211. A decision of that question then became unnecessary; and whether it was decided or not, our want of jurisdiction is clear." (211)

Fox Film Corporation distinguished this case from "*Enterprise Irrigation District v. Farmers Mutual Canal Co., supra,* and other cases, to the effect that our jurisdiction attaches where the non-federal ground is so inter-

woven with the other as not to be an independent matter . . ." (210-211)

Enterprise Irrigation District, which also denied jurisdiction for review, said:

> "But, where the non-Federal ground has fair support, we are not at liberty to inquire whether it is right or wrong, but must accept it, as we do other state decisions of non-Federal questions." *Murdock v. Memphis,* 20 Wall. 590, 635, 22 L. ed. 429, 444; *Eustis v. Bolles,* 150 U.S. 369, 37 L. ed. 1111, 14 S. Ct. 131; *Leathe v. Thomas,* 207 U.S. 93, 99, 52 L. ed. 118, 120, 28 S. Ct. 30; *Arkansas Southern R. Co. v. German Nat. Bank,* 207 U.S. 270, 275, 52 L. ed. 201, 203, 28 S. Ct. 78. (164)

In the latest case dealing with this subject; *Department of Mental Hygiene of California v. Kirchner,* 380 U.S. 194 (1965), in which the Court decided to remand for further clarifying proceedings in the California Supreme Court: ". . . in view of the importance and widespread interest in the case" (201), the Court again underlined the test for jurisdiction as follows:

> ". . . we are unable to say with any degree of certainty that the judgment of the California Supreme Court was not based on an adequate and independent non-federal ground. This Court is always wary of assuminng jurisdiction of a case from a State Court unless it is plain that a federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case." (196-197)

The Court concluded:

> "On the basis of the foregoing, it is clear that we cannot say with the requisite certainty that the California judgment rested *solely* on the Fourteenth

> Amendment, or, amounting to the same thing, that in striking the statute down under the State Constitution the court below acted under what it conceived to be the compulsion of the Federal Constitution to be the compulsion of the Federal Constitution (*Jankovich v. Indiana Toll Road Comm.*, 379 U.S. 487, 492; 13 L. ed. 2d 439, 443, 85 S. Ct. 493); one or the other determination would be necessary to our exercising jurisdiction." (200)

Matter of William S. George v. Catherwood and General Motors Corporation, 14 N.Y. 2d 234, 250 N.Y.S. (2d) 421, 199 N.E. 2d 503, and *General Motors Corporation v. Mulquin*, 134 Conn. 118, 55 A. 2d 732, are both decisions of the highest State Courts involving interpretation of the same paragraphs of the General Motors-United Automobile Workers Agreement and their application to identical waiver provisions in the unemployment compensation laws of those States. In both cases General Motors made the same arguments in a fruitless effort to disqualify claimants for benefits in a similar labor dispute situation to the instant cause. *George, supra,* additionally contained specific consideration and rejection of constitutional arguments by Appellant (Respondent in *George*) at 250 NYS 2d 421, 427. The jurisdiction of this Court was not invoked in either case.

In the instant case, the judgment of the highest State Court rested on the following, adequate, non-federal bases: (1) employees in the Michigan plants who claim benefits here, laid off due to a strike in an Ohio plant, were not disqualified for unemployment compensation under the Michigan Statute because the struck plant and their plants were not one and the same establishment; and (2) the language of the contract between two private parties, urged by

one of them as rendering the waiver provision of the State law inoperative, was invalid insofar as this objective was concerned.

The discussion of the independent Federal question of the Supremacy Clause of Article 6 of the Federal Constitution was unnecessary to a determination of the cause.

An express ground for this Court acting favorably on this Motion to Dismiss, is ". . . that the Judgment rests on an adequate non-federal basis" (Rule 16, 1(b)).

(2) A SUBSTANTIAL FEDERAL QUESTION IS NOT PRESENTED.

(a) The Supremacy Clause.

Appellant contends that the Supremacy Clause of the United States Constitution renders Section 31 of the Michigan Employment Security Act, which bars waiver of unemployment compensation benefits, invalid as repugnant to and in conflict with the collective bargaining agreement between appellant General Motors Corporation and United Automobile Workers, the Union representing the employees in question.

Appellant's argument proceeds as follows:

Major premise: Collective bargaining agreements on mandatory bargaining subjects have the force of Federal law, and override inconsistent State laws.

Minor premise: Paragraph 118 is the *quid pro quo* for "a limited no-strike clause (Paragraph 117) which permitted the Mansfield strike" (Jurisdictional Statement, p.

6), the latter paragraph (117) being a "mandatory" subject of bargaining.[2]

Deduction: Section 31 of the Michigan Employment Security Act barring waiver of benefits must yield to Paragraph 118 of the private collective bargaining agreement between Appellant employer and the Union.

There are serious flaws in this fallacious syllogism. The truth of the matter is that neither General Motors nor the United Automobile Workers wanted to permit an outside third party, "the Umpire", to decide certain issues, namely, production standards. Therefore, they mutually agreed to

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[2] "(117) During the life of this Agreement, the Union will not cause or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in or slow-down, in any plant of the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the bargaining procedure as outlined in this Agreement has been exhausted, and in no case on which the Umpire shall have ruled, and in no other case on which the Umpire is not empowered to rule until after negotiations have continued for at least five days at the third step of the Grievance Procedure and not even then unless authorized by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and written notice of such intention to authorize has been delivered to the Personnel Staff of the Corporation at least five (5) days prior to such authorization. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises because of any dispute or issue arising out of or based upon the provisions of the Pension Plan, Insurance Program, or *Supplemental Unemployment Benefit Plan;* nor will the Union authorize such a strike, stoppage, or picketing. In case a strike or stoppage of production shall occur, the Corporation has the option of cancelling the the Agreement at any time between the tenth day after the strike occurs and the day of its settlement. The Corporation reserves the right to discipline any employe taking part in any violation of this Section of this Agreement." [Exhibit 25, (405a)]

permit the right to strike during the life of the contract on this issue. The *"quid pro quo"* was simply the fact that General Motors had no desire to leave the decision on this subject in the hands of the Umpire, preferring to have it settled by economic strength.

Thus, paragraph *117, supra,* the limited no-strike clause, contained its own consideration. It was a mutual agreement of the parties to permit strikes to occur after exhaustion of the grievance procedure in disputes they were unwilling to have arbitrated. As to paragraph *118,* if it was specific consideration for anything it was by its own terms an exchange for *the scope* of the National Agreement—a *permissive,* and *not a mandatory,* subject of collective bargaining.[3]

Further, assuming *arguendo* that a no-strike clause is a "mandatory" subject for collective bargaining, the *quid pro quo* for such a clause is nowhere defined nor made mandatory under Federal law. For example: If the *quid pro quo* contained in paragraph 118 were an agreement that employees who strike in violation of the no-strike clause were to be executed by the employer, no one would argue that such execution was exempt from punishment as an unlawful homicide under the police power vested in the State. Such exercise of the police power of the State would not act in contravention of any Federal law or policy. Likewise, the prohibition against waiver of unemployment compensation benefits contained in Section 31 of the Michigan Statute contravenes no Federal law or policy.

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[3] *NLRB v. International Brotherhood of Electrical Workers,* 266 F. 2d 349, 5th Cir. 1959, cf *Labor Board v. Borg Warner Corp.,* 356 U.S. 342 (1958). See also *Lebus v. Local 1800 ILA* ... F. Supp. ... (US D.C. Ed. La.) 52 LRRM 2501.

As was said by Justice Black of the Michigan Supreme Court below, speaking for the Court:

> "By the broadly purposed social security act of 1935, Congress induced the States to enact their unemployment compensation laws. See footnote 2, *Unemployment Compensation Commission of Alaska v. Aragon,* 329 U.S. 143, 145, (67 S. Ct. 245, 91 L. ed. 136). The policy of social security is as strong, if not stronger than that of promotion—by congressional legislation—of collective bargaining and the ordering of industrial relations to minimize industrial strife. The two are consistent as well as socially beneficial. Both may be enforced, compatibly in today's context, by any State which, utilizing the specific likeness of said section 31, has prohibited agreements to waive unemployment benefits." 376 Mich. 135, 147.

Thus, the Michigan Court reminds us that even such gigantic private entities as General Motors Corporation and United Automobile Workers cannot by private agreement vitiate the public policy of protecting victims of unemployment from waiver of their benefit rights. Moreover, it should be noted that the construction urged by General Motors is advanced for self-serving purposes here, by only one of the two parties to the Agreement.

Appellant stated below that Paragraph 118 was designed to relate to liability for damages in the event of strikes, and to the question of eligibility for contractual benefits in the form of holiday pay, as well as attempted waiver of unemployment compensation benefits (Joint Appendix on Appeal before Michigan Supreme Court: 469(a)). The first two objectives may be valid. The third, waiver of benefits, is not.

Carmichael v. Southern Coal and Coke Co., 301 U.S. 495 (1937), held that the federal and state unemployment

tax acts embodied a co-operative legislative effort for the accomplishment of a common purpose which neither government could achieve by itself. At page 526, in answer to the claim that the states had surrendered sovereignty to the federal government in the area of unemployment compensation, this Court said:

> "As the state legislation is not the product of a prohibited coercion, there is little else to which appellees can point as indicating a surrender of state sovereignty. As the opinion of the *Chas. C. Steward Co.* case points out, full liberty of action is secured to the state by both statutes. The unemployment compensation fund is administered in accordance with state law by the state commission. The statute may be repealed at the will of the legislature, and in that case the state will be free to withdraw at any time its unexpended share of the Unemployment Trust Fund from the treasury of the United States, and to use it for any public purpose. And, for the reasons stated in the opinion in the *Chas. C. Steward Machine Co.* case, we conclude that the deposit by the state of its compensation fund in the Unemployment Trust Fund involves no more of a surrender of sovereignty than does the choice of any other depository for state funds. The power to contract and the power to select appropriate agencies and instrumentalities for the execution of state policy are attributes of state sovereignty. They are not lost by their exercise."

In spite of this clearly delineated public purpose common to both the national and state governments, the employer would have us strike down the waiver provision of Section 31 of the Act on the theory that a contract provision pursuant to a federal enactment foreign to the joint federal-state unemployment compensation program mandates this anomaly.

Nor is it at all clear that the language of the "no-strike" provision here in question involves a mandatory subject of bargaining under Federal law.

In *NLRB v. Davison,* 318 F. 2d 550 (4th Cir. 1963) the Court enforced the decision of the National Labor Relations Board that an employer had refused to bargain in good faith by insisting on a contract clause indemnifying him from interference by a third party. Chief Judge Sobeloff said:

> "It is obvious that most matters that might be discussed or proposed in collective bargaining are likely to bear some relation, even if tenuous, to 'wages, hours, and other terms and conditions of employment.' But it would not necessarily follow that the indemnity proposal, insisted upon to impasse, is itself a mandatory subject of bargaining. Not all proposals that somehow respond to a problem that is customarily bargained about may themselves be insisted upon to impasse. Some proposals in response to the problem of strikes are mandatory subjects of bargaining. In *Borg-Warner,* however, the Supreme Court held that the 'ballot' clause was not. Some proposals to reduce disruptions resulting from breaches of contract are mandatory subjects of collective bargaining, e.g., arbitration agreements. Yet, as we have seen, it had been consistently held that performance bonds are not mandatory subjects. *It is the particular proposal, not merely the problem to which it is addressed, that must concern 'wages, hours, and other terms and conditions of employment.'"* (557) (Emphasis supplied)

International Brotherhood of Teamsters v. Oliver, 358 U.S. 283 (1959), cited by Appellant, is a case in which the United States Supreme Court determined that the collective bargaining agreement in question was in truth

concerned with wages, and not with price fixing. On this basis the Court then held that the attempted application of Ohio's Anti-Trust Statute was improper. There the Court was dealing with an actual fact situation in which the facts involved the fixing of rates and the issue was whether this amounted to price fixing, as opposed to collective bargaining on wages. In contrast, paragraph 118 of the collective bargaining agreement here in question attempts to create a *fiction* that an authorized strike is *deemed* to exist in one plant of the corporation where *in fact* there is no strike and the employees are laid off due to lack of work, in the event that the plant in question suffers an interruption in the flow of materials or services as the result of a strike in another plant of the corporation. Courts look behind such attempts and reach the actual facts. See *In Re Morton,* 284 N.Y. 167, 30 N.E. 2d 369; *Knowles v. Roberts,* — Ohio App. —, 117 N.E. 2d 173; *International Union v. Wisconsin Board,* 336 U.S. 245.

The "Declaration of Policy" in the Michigan Employment Security Act, Section 2, set forth in Appendix B-1 of the Jurisdictional Statement, reads:

> "The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows:
>
> Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature . . . for the public good and the general welfare of the people of this state."

This is the very type of enactment concerning which the Court drew a distinction when it said in *International Brotherhood of Teamsters v. Oliver,* 358 U.S. 283 (1959):

> "We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce." (297)

Thus the Court makes it clear that it does not contemplate overriding State Law of the type involved here.

As was said in *Southern Pacific Co. v. Arizona,* 325 U.S. 761:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, *Reid v. Colorado,* 187 U.S. 137, 148; *Missouri Pacific R. Co. v. Larabee Flour Mills Co.,* 211 U.S. 612, 621, *et seq.; Missouri, K. & T.R. Co. v. Harris,* 234 U.S. 412, 418-419; *H.P. Welch Co. v. New Hampshire,* 306 U.S. 79, 85; *Allen-Bradley Local v. Board,* 315 U.S. 740, 749, or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. *Sinnot v. Davenport,* 22 How. 227, 243; *Missouri, K. & T.R. Co. v. Haber,* 169 U.S. 613, 623; *Savage v. Jones,* 225 U.S. 501, 533; *Carey v. South Dakota,* 250 U.S. 118, 122; *Atchinson, T. & S.F.R. Co. v. Railroad Comm'n,* 283 U.S. 380, 391; *Townsend v. Yeomans,* 301 U.S. 441, 454." (at 766).

California v. Taylor, 353 U.S. 553 (1957), cited in support of its position by Appellant, simply dealt with the question of whether a State could legislate on the same subject matter upon which Congress had acted. The Court held that the Railway Labor Act, rather than a State Civil

Service Statute, was appropriate law governing wage agreements of interstate railways and railway employees. This in no way stands as authority for the proposition that Federal law concerning collective bargaining rights is the law governing circumstances under which the State may pay unemployment compensation benefits to laid off workers.

There is no basis for invoking the Supremacy Clause in this case.

(b) Due Process, Equal Protection, and the Commerce Clause.

In the twenty-eight years since benefit payments began under the Michigan Employment Security Act, there have been two previous occasions on which attempts have been made, without success, to invoke the jurisdiction of our highest Court over a decision of the Michigan Supreme Court interpreting the labor dispute disqualification provision of the Michigan Statute.

In *Lawrence Baking Company v. UCC,* Petition for Writ of Certiorari was denied October 9, 1944, 323 U.S. 738. This was a case in which:

> ". . . striking employees filed claims with defendant commission for unemployment compensation benefits . . ." (308 Mich. 198, 203, 13 N.W. 2d 260, 154 ALR 660) (1944).

The highest Court in Michigan allowed payment of benefits on the ground that the striking employees had been replaced and that there was no "stoppage of work" in the establishment concerned, within the meaning of the Statute. Employer's attack raised the issues of "due

process and equal protection of law", which issues were discussed and rejected by the Michigan Supreme Court, as follows:

> "Plaintiff further contends that the circuit court's construction of the 1941 amendment, which construction we have hereinbefore affirmed, renders said amendment unconstitutional as denying plaintiff employer due process and equal protection of law." (211) (Here the Reporter cites the 14th Amendment of the U.S. Constitution and Article II, Sec. 16 of the Michigan Constitution.)

After rejecting this argument, the Court further cites the contention of the employer that ". . . the payment of unemployment benefits to employees on strike, without a judicial determination of the merits of the labor controversy, constitutes an arbitrary intervention by the State in aid of one party to the controversy." (213) The Court rejects this contention as well.

Ford Motor Company v. Alexander Park, 360 U.S. 251 (1959), is a *per curiam* opinion which reads:

> "The Motion to Dismiss is granted and the appeal is dismissed for want of a substantial federal question."

This dealt with the second of the two Michigan cases involving labor disputes and unemployment compensation in which an effort was made to invoke jurisdiction.

There, as here, claimants for unemployment compensation benefits were unemployed due to layoffs at their plants because of a strike in another plant of the same corporation (Ford Motor Company) by their labor organization, the United Automobile Workers. The "Jurisdictional Statement" to the October Term, 1958, of the Supreme Court of the United States, under the heading "The Ques-

tions are Substantial", listed and discussed the following sub-headings:

"The Equal Protection Clause."
"The Commerce Clause."
"Related Federal Statutes."
"Far Reaching National Importance of Questions Presented."

In the instant case Appellant attempts to invoke the challenge of invalidity under the "equal protection", "due process" and "commerce" clauses by general reference to what it describes as "a discriminatory burden on interstate employers". (Jurisdictional Statement, p. 35) It does so on the false premise that payment or denial of unemployment benefits was dependent "on whether such dispute originated and was negotiated in a plant of the employer located outside or inside of the State of Michigan". (Jurisdictional Statement, p. V)

The decision of the Michigan Supreme Court contains no such ruling. It simply held that each plant of the "employing unit" in question (Sec. 40) was a separate "establishment" within the meaning of Sec. 29(1)(b) of the Statute and in accordance with the ruling in *Park, supra,* without reference to State lines, and that claimants in the Flint plants were not "directly involved in the labor dispute (in Mansfield, Ohio) which caused the stoppage of work" (in Flint, Michigan) within the meaning of Sec. 29(1)(b)(2) thereof.

Such classification on the basis of the definition of "establishment" and the determination of direct involvement "is neither arbitrary nor capricious, and rests upon some reasonable consideration of difference or policy", *Allied Stores of Ohio, Inc. v. Bowers* (1958), 358 U.S. 522, 527.

The Michigan Legislature could, without encountering constitutional difficulty, provide for payment of unemployment benefits to strikers by amendment of the statutory provisions here in question. Strikers were in fact paid in *Lawrence Baking Co., supra,* wherein certiorari was denied.

Surely classification for payment or non-payment on the basis of physical location and degree of involvement, under the present language, is well within the ambit of reasonableness.

CONCLUSION

It is respectfully submitted that this Court does not have jurisdiction of these appeals and, therefore, should grant this Motion to Dismiss or Affirm.

Respectfully submitted,

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